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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

FERENC KOKAS,

Plaintiff, Cross-defendant and
Appellant,

v.

RICHARD WHEELER,

Defendant, Cross-complainant and
Respondent.

G049891

(Super. Ct. No. RIC519646)

O P I N I O N

Appeal from a judgment of the Superior Court of Riverside County, Craig Riemer, Judge. Affirmed as modified.

Law Offices of Nate G. Kraut and Nate G. Kraut; Ferenc Kokas, in pro. per., for Plaintiff, Cross-defendant and Appellant.

Brooke M. Miller for Defendant, Cross-complainant and Respondent.

INTRODUCTION

This appeal demonstrates – if demonstration is needed – the perils of do-it-yourself legal work. While aversion to lawyers may be widespread, and to some extent understandable, they do have their uses. In this case, they could perhaps have saved the parties a great deal of time and money and the court from having to conduct a 16-day bench trial.

On April 18, 2008, appellant Ferenc (Frank) Kokas, respondent Richard Wheeler, and a third person, Anthony Chan, signed a document drafted by one of the participants in a well-populated business meeting. When problems later arose, it turned out that each of the signatories had a different idea of the document's scope and significance. Kokas and Chan believed they had entered into a binding contract; however, they disagreed about what it meant. Wheeler denied that there had been any enforceable agreement at all – only an agreement to agree.

After listening to 16 days of testimony, the court sensibly decided that the situation was hopelessly snarled. It granted Wheeler's request for rescission against Kokas – essentially putting the two of them back where they had started before dabbling in contract drafting. Wheeler did not obtain any relief against Chan. As part of the rescission, the court ordered Kokas to return the money he had been paid pursuant to the contract.

Kokas has appealed from the portion of the judgment against him in Wheeler's favor.¹ Kokas asserts on appeal that the court improperly shifted the burden of proof as to fraud, the basis of the rescission claim, from Wheeler to him, without giving him a chance to meet the burden. He also complains that the court signed and entered the judgment against him too hastily and that it ordered him to pay the wrong party.

¹ Although a party to the suit in the trial court, Chan has not appealed the portion of the judgment against him, and he is not a party to this appeal.

We affirm the judgment as modified herein. The court properly granted Wheeler's request for rescission of his agreement with Kokas, and we modify the judgment to make it explicit that rescission was granted as to this portion of the contract. The problem of a windfall to Wheeler can be solved by modifying the judgment to require him to repay his company, which issued the payment checks to Kokas.

FACTS

The large cast of characters in this drama includes not only the three individuals – Kokas, Chan, and Wheeler – but also their companies. Because several companies are involved, some with confusingly similar names, we set out here a schedule of the entities and their principals.

American Bath Factory – owned by Wheeler.

Bath Connection – owned 75 percent by Kokas, 25 percent by Chan.

Bath Sellers, Inc. – formed 1989, owned 50 percent by Chan, 50 percent by Kokas.

Brass Sellers – owned by Kokas as of April 2008; Chan had an interest but was bought out by Kokas at some point before 2002.

Precision Brass Services – formed in 1992, owned by Chan.

Touch of Brass – owned by Chan.

Water Decor – formed in 2002, originally owned equally by Kokas and Chan; in April 2008 owned 75 percent by Chan and 25 percent by Kokas.

As might be deduced from their names, all the companies are involved in some way with the manufacture and sale of plumbing fixtures. According to Chan, Wheeler's American Bath Factory specialized in low-end fixtures sold in big box stores like Home Depot, while Precision Brass Services designed and manufactured high-end bath and kitchen fixtures and parts. Precision Brass Services did not sell its products to consumers. Water Decor sold to consumers and got most of its inventory from Precision Brass Services.

Kokas and Chan had been friends and business associates for many years before the dispute that is the subject of this lawsuit. Together they founded Water Decor in 2002, and in 2005 Water Decor moved its operations from Pasadena, where Kokas' Brass Sellers was located, to the facilities housing Chan's Precision Brass Services. Water Decor was funded with a combination of Kokas' personal funds and funds from Brass Sellers. Brass Sellers did not charge Water Decor for any services while the two companies shared facilities. Kokas and Chan did not enter into an agreement about rent for the Water Decor space, although Water Decor occasionally paid some rent. Precision Brass Services paid the salaries of some of Water Decor's employees and supported its day-to-day operations. As of March 2008, Chan testified, Precision Brass Services had invoiced Water Decor for \$684,000 in unpaid inventory.

Precision Brass Services operated a plant in Mexico. The American side of the company shipped parts to the plant in Mexico, where they were coated, polished, and assembled. The finished products were then shipped back to the United States for distribution. Wheeler's American Bath Factory also had a plant in Mexico.

Chan testified that in 2005 Wheeler expressed an interest in merging American Bath Factory and Precision Bath Services. Wheeler wanted Water Decor included in the merger, but Chan could not agree because Kokas owned part of it. Wheeler decided he did not want to merge without Water Decor. Wheeler testified that he and Chan discussed a merger in 2004, but never proceeded any further.

Wheeler and Chan began combining their operations in Mexico in November 2007. Chan moved his Mexican operations into Wheeler's facilities.

In early 2008, Wheeler again expressed an interest in merging Chan's companies with his own. Whether Water Decor was to be a part of the merger was uncertain. Wheeler had set the wheels in motion for an IPO for the company resulting from the merger that he expected to bring in millions of dollars in investment money. In

addition, Water Decor was bidding on a large hotel project in Las Vegas. If successful, Kokas estimated the contract would generate \$1.3 million in profit.

On April 18, 2008, Wheeler, Chan, and Kokas met at American Bath Factory's facility in Corona. Also present were Jim Wheeler, Wheeler's brother; Landon Holloway, Precision Brass Services' general manager, who was at the time working part-time for Wheeler; and at least two other people. According to Kokas and Chan, the meeting turned acrimonious, as Wheeler loudly demanded that Kokas give up his 25 percent ownership of Water Decor. He also demanded an immediate answer from Kokas. Kokas finally agreed to sell his interest in Water Decor for \$510,000. Wheeler instructed his brother and Holloway to draft up an agreement for signature.

The agreement took the form of an e-mail from Landon Holloway to Jim Wheeler, dated April 18, 2008, at 4:44 p.m. The printed portion of the e-mail stated, "Rick Wheeler is purchasing 25% of WaterDecor [*sic*] Inc. from Frank Kokas for \$510,000 Rick will pay a \$60,000 down payment and \$7,500 per month for 60 months. This includes all moneys owned [*sic*: owed] By Water Decor and Anthony Chan (including Precision Brass Services, Inc.)" There were two handwritten notations: "Starting payment on June 1" and "In addition to the above Anthony Chan ~~will~~^{or} have [*sic*] given up his 25% of ownership in the company he owned in 'The Bath Connection, Inc.'"² The strike-through portion of the latter notation was initialed "FK." The e-mail was signed by Kokas, Wheeler, and Chan. Kokas received a check for \$60,000 on the spot, drawn on an American Bath Factory account.

Wheeler indicated at trial that the e-mail was not a contract, but simply an acknowledgement of the presence of all three parties on April 18 and their discussions "and this is the point where we can move forward." He testified that the \$60,000 check Kokas received at the meeting was not the first payment on the stock purchase but rather

² Kokas testified that he handwrote this second portion of the agreement. Chan later transferred the Bath Connection shares to him.

an amount needed to settle Chan's personal debts to Kokas. The check bears the notation in the "for" line "25% Water Decor."

In June 2008, Kokas sent an invoice to Chan claiming that Chan's company, A Touch of Brass, owed his Brass Sellers company \$37,364 for inventory Brass Sellers had sent to Touch of Brass. Chan refused to pay, asserting that this debt was wiped out in the April 18 agreement. Kokas, for his part, insisted this debt had nothing to do with the deal made on April 18. At some point in 2009, this dispute was resolved, and Kokas told Chan to forget about paying this invoice.

Kokas received three installment payments of \$7,500 each in June, July, and August 2008 from American Bath Factory. By mid-2008, however, as recession loomed, it became clear that the IPO was not going to happen. In addition, the Las Vegas hotel project was suspended. The projected merger between Wheeler's and Chan's companies fell apart at the end of the year. Chan moved his Mexican operation out of Wheeler's facility in December 2008, and he eventually shut down the operation entirely.

Kokas testified that Wheeler called him in August 2008 to tell him that the monthly installment payments would cease because the merger between his companies and Chan's was off, as was the IPO. Wheeler testified that he stopped making payments because Chan and Kokas were feuding over the Touch of Brass invoice, and he was uncertain about whether Kokas would still have 25 percent of Water Decor at the end of the day. He testified that the failure of the IPO effort did not affect his desire to merge Chan's companies with his. Kokas also testified that Chan's accountant called him in June 2008 and told him Chan would lobby Wheeler to stop making installment payments on the Water Decor shares because of the \$37,364 invoice from Brass Sellers to Touch of Brass. Chan denied making any such threat.

Chan prepared a document labeled "invoice," dated November 2008, which showed a debt of nearly \$1 million owed by Water Decor to Precision Brass Services for payroll, computer services, design, equipment and supplies, utilities, and rent. Chan

testified that the document was not a real invoice but was prepared at Wheeler's insistence. When Wheeler did not get the millions he had expected from an IPO, he wanted to stop paying Kokas for the Water Decor shares. Wheeler believed this large debt would dilute Kokas' interest in Water Decor and make it all but worthless. To this end, Wheeler convinced Chan to create a document, labeled "invoice," showing Water Decor in debt to Precision Brass Services in the amount of \$918,708. Chan testified that, although Precision Brass Services had supported Water Decor over the years in various ways, he did not expect to collect anything from Water Decor for this support until the company was profitable. The amounts in the invoice were not entered into Precision Brass Services' accounting system, and the invoice was never sent to Water Decor for collection. Chan estimated at trial that Water Decor owed Precision Brass Services between \$500,000 and \$700,000 for services rendered over the years since Water Decor was founded, but the debt was not recorded on Precision Brass Services' books. The merchandise debt, \$700,000, was recorded.

Wheeler testified that he first saw the document labeled "invoice" in discovery after the lawsuit had been filed. He testified he learned from Chan in October 2008 about an additional \$700,000 in Water Decor liabilities, of which he was unaware in April 2008. When Wheeler asked Chan about the source of this debt, Chan said it was money Water Decor owed Precision Brass Services that he intended to add to the records.

Kokas testified that the first time he saw this document was in late 2010, in connection with discovery for the lawsuit. He did not dispute the fact Precision Brass Services had provided these items to Water Decor, but he did not know whether the amounts attributed to each category were correct.

Kokas sued Wheeler in February 2009 for breach of contract, after Wheeler stopped making the monthly payments. In April 2009, Wheeler cross-complained against Kokas and Chan for rescission, breach of contract, money had and received, and reformation. The rescission causes of action were based on fraud and mistake.

Wheeler moved for summary judgment or summary adjudication in February 2011. That motion was heard and denied in May. The case was tried to the court over 16 days, beginning June 28 and ending July 28, 2011. Wheeler moved for judgment under Code of Civil Procedure section 631.8. That motion was also denied. The parties filed posttrial briefs. The court requested additional briefing about Corporations Code sections 1507, 25401, and 25501, which had been raised in Wheeler's posttrial brief. Each party filed a supplemental posttrial brief.

The court filed its tentative decision in May 2012. It found that Wheeler was entitled to rescind the contract with Kokas and to recover the amounts paid to Kokas, basing its decisions on Corporations Code sections 25401 and 25501. The court found the absence of Water Decor's debt to Precision Brass Services from its balance sheet to be a material omission. The court also found against Kokas on his complaint against Wheeler and against Wheeler on his cross-complaint against Chan. No one asked for a statement of decision, and judgment was entered in June 2012.

DISCUSSION

Because no one asked for a statement of decision, we apply the usual rule of appellate review: The judgment is presumed correct, and we indulge all intendments and presumptions in its favor. We review the trial court's ruling, not its reasoning. (*People v. Indiana Lumbermens Mutual Ins. Co.* (2011) 194 Cal.App.4th 45, 52.)

Kokas has appealed only from that portion of the judgment relating to Wheeler's cross-complaint against him, not from the adverse ruling on his own complaint.³ Specifically, Kokas argues that by basing its decision on the Corporations Code, rather than common law fraud, the trial court denied him due process in that he did not have a chance to produce evidence to meet the elements of a Corporations Code

³ Although Kokas asserts that if the court had not relied on the Corporations Code sections to find in Wheeler's favor he would have prevailed on his complaint for breach of contract, he does not support this assertion with argument or authority. It is therefore abandoned. (See *Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 699.)

violation. In addition, the omission of the \$900,000 debt of Water Decor to Precision Brass Services was not a “material omission.” He also argues that the trial court committed reversible error by signing Wheeler’s proposed judgment before the expiration of his time to object to it and that the trial court could not order him to repay Wheeler when it was American Bath Factory that had made the payments to him.

I. Rescission

Corporations Code section 25501 provides in pertinent part, “Any person who violates Section 25401⁴ shall be liable to the person who purchases a security from him or sells a security to him, who may sue either for rescission or for damages (if the plaintiff or the defendant, as the case may be, no longer owns the security), unless the defendant proves that the plaintiff knew the facts concerning the untruth or omission or that the defendant exercised reasonable care and did not know (or if he had exercised reasonable care would not have known) of the untruth or omission. Upon rescission, a purchaser may recover the consideration paid for the security, plus interest at the legal rate, less the amount of any income received on the security, upon tender of the security.”⁵

As the court explained in *California Amplifier, Inc. v. RLI Ins. Co., Inc.* (2001) 94 Cal.App.4th 102, Corporations Code section 25501, part of the Corporate Securities Law of 1968, was intended to afford a private right of action for damages for violation of a statute that was essentially penal in nature. (*Id.* at pp. 108-109.) The

⁴ At the time of trial and judgment, Corporations Code section 25401 provided, “It is unlawful for any person to offer or sell a security in this state or buy or offer to buy a security in this state by means of any written or oral communication which includes an untrue statement of material fact or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.” (Amended by Stats. 2013, c. 335 (S.B. 538), § 6.)

⁵ From the record, it appears that the Corporations Code and its burden-shifting surfaced first in Wheeler’s summary judgment motion, filed in February 2011, to which Kokas responded without mentioning the code. Corporations Code section 25401 also formed part of the basis for Wheeler’s motion for judgment under Code of Civil Procedure section 631.8 during trial. Wheeler raised the Corporations Code issue again in his posttrial brief, and the trial court requested further briefing on the subject from all parties. In his supplemental posttrial brief, Kokas did not raise the issue of a prejudicial shift in the burden of proof.

statute “eliminates some of the elements of common law fraud, but balances this expansion of liability by placing other restrictions on recovery.” (*Id.* at p. 109.)

Kokas’ position with respect to Corporations Code section 25501 is two-fold. He argues the trial court deprived him of a fair trial because it relied on the code section, rather than common law fraud, in concluding that Wheeler was entitled to rescission. This was unfair, Kokas maintains, because he did not have a chance to present evidence to meet the code section’s burden of proof, which differed from the burden of proof imposed by a claim for fraud. His fallback position is that even without knowing about the section, he *did* present the evidence necessary to meet the burden of proof imposed by it. He presented evidence to show that the omission was not material and that he did not know about the omission. The trial court erred by not properly evaluating this evidence.

Corporations Code section 25501 represents a change in the burden of proof from common law fraud. The elements of common law fraud are: (1) misrepresentation; (2) defendant’s knowledge of falsity; (3) intent to defraud (i.e., to induce reliance); (4) justifiable reliance; and (5) resulting damage. (*Seeger v. Odell* (1941) 18 Cal.2d 409, 414.) The plaintiff has the burden of proving each of these elements. (*Wilkins v. National Broadcasting Co.* (1999) 71 Cal.App.4th 1066, 1081.)

By contrast, Corporations Code section 25501 requires the *defendant* to prove that he or she *did not know* the falsity of the representation, as opposed the requiring the plaintiff to prove that the defendant did know, as would be the case with common law fraud. Knowledge of falsity becomes an element that must be disproved by the defendant rather than proved by the plaintiff. (See *People v. Simon* (1995) 9 Cal.4th 493, 516.)

We once again return to basic principles of appellate review: we presume the judgment is correct, and we review the result not the reasoning. While using Corporations Code section 25501 instead of common law fraud as the basis for the ruling

shifted the burden of proof to some extent, this shift does not affect the court's ruling on rescission. It is not necessary to prove either knowledge of falsity or intent to deceive in order to obtain rescission. This remedy is available for "innocent mistake," that is, a material misstatement that the defendant believes to be true. (See *Van Meter v. Bent Constr. Co.* (1956) 46 Cal.2d 588, 593-594; *Wood v. Kalbaugh* (1974) 39 Cal.App.3d 926, 929; *Crocker-Anglo Natl. Bank v. Kuchman* (1964) 224 Cal.App.2d 490, 495-407; *Brown v. Klein* (1928) 89 Cal.App. 153, 155-156 [company's liabilities understated by mistake; rescission granted]; Rest.2d Contracts, § 164, com. b; illus. 1, 2; Civ. Code, § 1689, subd. (b)(1).) The location of the burden of proof on knowledge or intent to deceive is immaterial. Wheeler did not have to prove Kokas knew about the debt in order to prevail, and Kokas did not have to prove he did not know about the debt in order to ward off the rescission claim.⁶ This remedy was available even if Kokas believed Water Décor had no such debt or the debt was much lower than it was, so long as the mistake was material.⁷

In his opening brief, Kokas asserts that he presented sufficient evidence of his ignorance of the debt to meet the standard of Corporations Code section 25501. It follows, then, that his mistake about the amount of Water Décor's debt was innocent.

Kokas also argues the omission was not material because Chan testified he did not intend to collect the debt. Chan actually testified rather differently. He said he did not intend to collect the debt unless or until Water Decor became profitable. At that

⁶ Wheeler also did not have to prove damages, contrary to Kokas' assertion. Corporations Code section 25501 provides for alternate remedies: rescission *or* damages (if the defendant no longer has the security). Proof of damage (monetary loss) is not necessary to obtain rescission. (*Reed v. King* (1983) 145 Cal.App.3d 261, 264, fn. 1.) Under the common law, rescission is an alternative remedy to damages. (See *Sharabianlou v. Karp* (2010) 181 Cal.App.4th 1133, 1145; Civ. Code, § 1692.)

⁷ The court's findings imply (1) the April 18 agreement was a contract to purchase Water Decor shares, not an agreement to agree; (2) Water Decor was indebted to Precision Brass Services in some significant amount; and (3) the omission of the debt from Water Decor's financial statements was material. "A fact is material if there is a substantial likelihood that, under all the circumstances, a reasonable investor would consider it important in reaching an investment decision. [Citation.]' [Citations.]" (*Insurance Underwriters Clearing House, Inc. v. Natomas Co.* (1986) 184 Cal.App.3d 1520, 1526.)

point, he would seek to recoup some of the funds Precision Brass Services had put into Water Decor. He also testified he thought Water Decor had potential – that is why he continued to support it even though it had never made a profit – so the possibility that it might someday make money was not, in his view at least, so much pie in the sky. In fact, had the recession not intervened, Water Decor might well have made some hefty profits by securing a contract for the Las Vegas hotel project. No one disputed that Precision Brass Services had provided significant support services to Water Decor, and Chan made it abundantly clear at trial that he was not going to forget about collecting it.

Likewise, Kokas' argument that the April 18 agreement wiped the debt out founders on the trial testimony. Chan testified that he did not intend to wipe out this debt by means of the April 18 agreement, and Kokas now professes that he didn't even know about the debt at that time. The document listing the amounts owed was not prepared until months later. Kokas argues, in effect, that (a) he knew nothing about the debt on April 18 and (b) he intended to wipe it out at the April 18 meeting.

Wheeler testified that he would not have entered into an agreement to purchase the Water Decor stock if he had known about this debt. Certainly a debt of nearly a million dollars, even if not immediately due, would give a reasonable investor something to think about before parting with his or her money for stock in the debtor company. The fact that this debt was unbooked might also cause a reasonable investor to wonder whether the IRS might not come calling at some point. Substantial evidence supported the trial court's determination that leaving out the debt was material to the purchase of the Water Decor shares.

II. Entry of Judgment

Kokas also complains that the court entered judgment too soon, before he could file his objections pursuant to California Rules of Court, rule 3.1590(j), which permits a party to file objections within 10 days after service of the proposed judgment.

The proposed judgment was served on June 5, 2012. Kokas filed his objections on June 14, the same day that judgment was entered.

Kokas' objections were two in number, both quite vague. First, he objected that the proposed judgment was "under-inclusive and incomplete, since it does not include the Court's findings as reflected in the Court's Tentative Decision." He also objected that the judgment "does not reflect the Court's reasons for arriving at its decision."

To reverse a judgment, as Kokas requests, it is not enough to find error. The error must also be prejudicial. (*Elsner v. Uveges* (2004) 34 Cal.4th 915, 939). "Where any error is relied on for a reversal it is not sufficient for appellant to point to the error and rest there. . . . The fact of prejudice is just as essential as the fact of error." (*Santina v. General Petroleum Corp.* (1940) 41 Cal.App.2d 74, 77.) Prejudice, in this context, requires a showing "that a different result would have been probable if such error . . . had not occurred or existed." . . . [Citation.]" (*Robert v. Stanford University* (2014) 224 Cal.App.4th 67, 72; see Code Civ. Proc., § 475.)

California Rules of Court, rule 3.1590 requires a court to issue a tentative decision after a bench trial. The court in this case filed its tentative decision on May 10, 2012. Pursuant to rule 3.1590(d), Kokas had 10 days to request a statement of decision. (See Code Civ. Proc., § 632.) He did not request one.

A statement of decision is the vehicle by which a court "explain[s] the factual and legal basis for its decision as to each of the principal controverted issues at trial" (Code Civ. Proc., § 632.) It is not necessary that a judgment explain anything; it simply states the ultimate outcome of the lawsuit. (See *Avakian v. Dusenberry* (1936) 15 Cal.App.2d 55, 57; Code Civ. Proc., § 577.)

Although the trial court should have waited for the days provided by the rules to expire before issuing the judgment, Kokas has not shown how he was prejudiced by its haste. In his opening brief, Kokas asserts he was prejudiced by the premature entry

of judgment because the judgment does not explicitly state that the agreement between him and Wheeler is rescinded, along with the other terms of the April 18 contract. Kokas' objections did not ask the court for any such additions to the judgment. They merely observed that the judgment did not include the findings of the tentative decision and did not explain the court's ruling.

The objections were meritless; they amounted to an untimely and inadequately articulated request for a statement of decision.⁸ And even if the trial court had heeded his objections, the outcome would have been unchanged. Kokas did not object to the proposed judgment in the sense that he pointed out errors. He objected on the ground the judgment was too terse; he asked for more verbiage, not a different result. Had the trial court sustained the objections, it would have issued a longer judgment, but the ultimate result would have been unchanged.

III. Modification of the Judgment

There are two problems with the judgment that can be corrected as a matter of law, without requiring reversal. We may examine questions of law raised for the first time on appeal. (*Hale v. Morgan* (1978) 22 Cal.3d 388, 394.)

First, as Kokas correctly argues, the judgment itself does not explicitly state that the April 18 agreement between him and Wheeler is rescinded; the judgment must be modified to include this information. Kokas returns the money paid for his Water Decor shares, plus interest, and to the extent he lost his interest in Water Decor, he gets that back.⁹

We must point out that the parties to the April 18 agreement are not solely Kokas and Wheeler. Kokas and Chan also made promises to each other, relating to

⁸ A request for a statement of decision must (1) be made within 10 days after the court announces its tentative decision and (2) specify the controverted issues as to which the party wants a statement. (See Code Civ. Proc., § 632.) Kokas' objections fulfilled neither of these requirements.

⁹ As of the date of trial, Kokas still had his Water Décor share certificates, and it is not clear that any document records a transfer of his interest in Water Decor to Wheeler.

certain debts and to Chan's shares in "The Bath Connection, Inc." Neither Kokas nor Chan asked to have these agreements rescinded, and the court determined that Wheeler had not made a case for any relief against Chan. As the judgment includes no findings on the state of the agreements between Kokas and Chan – and no one has brought this omission up on appeal – this issue is not before us. We mention it only because the modification of the judgment must refer only to rescission of the portion of the agreement between Wheeler and Kokas, not the entire agreement.

Second, Kokas argues the trial court improperly ordered him to return the money he had received for his Water Decor shares to Wheeler, when it was Wheeler's company, American Bath Factory, that made both the \$60,000 down payment and the three monthly payments. Kokas made no such objection in the trial court, raising this objection for the first time on appeal. Nevertheless, as this is a pure question of law, we may examine this issue.

Rescission is an equitable remedy, and the courts employing this remedy are empowered to bring about substantial justice by adjusting the equities. (*Sharabianlou v. Karp, supra*, 181 Cal.App.4th at p. 1144.) "[I]n such actions the court should do complete equity between the parties' and to that end 'may grant any monetary relief necessary' to do so. [Citation.] It is the purpose of rescission 'to restore both parties to their former position as far as possible.' [Citation.]" (*Runyan v. Pac. Air Indus.* (1970) 2 Cal.3d 304, 316.)

American Bath Factory, not Wheeler, paid Kokas for his Water Decor shares. Restoring Wheeler to his former position therefore does not include giving him American Bath Factory's money. Accordingly, the judgment for rescission in Wheeler's favor must include an order that Wheeler in turn restore this money to American Bath Factory, including any interest on the judgment.

In *Stewart v. Crowley* (1931) 213 Cal. 694, the plaintiffs successfully sued to have a lease and an option rescinded for fraud. Because the defendant had sold the

lease and option to an innocent third party, the court conditioned rescission on the plaintiffs' paying the third party what he had paid for the lease, in accordance with the equitable principle that a court should do complete equity between the parties. (*Id.* at pp. 699, 700-701.)

In this case, American Bath Factory should get back the money it paid to benefit Wheeler. Accordingly, Wheeler's recovery from Kokas is conditioned on repayment to American Bath Factory of the amount paid for Wheeler's benefit pursuant to the April 18 contract, plus the interest Kokas is required to pay to Wheeler.

DISPOSITION

The judgment is modified to include (1) a holding that the contract of April 18, 2008, is rescinded as between Wheeler and Kokas and (2) a requirement that Wheeler repay American Bath Factory the amounts it expended for his benefit in connection with the rescinded contract and any interest collected on these amounts. In all other respects, the judgment is affirmed. Respondent is to recover his costs on appeal.

BEDSWORTH, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

ARONSON, J.